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Jason Berkner
Regulatory Division
U.S. Army Corps of Engineers
PO Box 6898, 2204 3rd St.
JBER, Alaska 99506

RE: Chuitna Coal Project/Submission of Comments to the PDSEIS

Dear Mr. Berkner:

As counsel for the Native Village of Tyonek (NVT), and at the Tribe's direction, I am writing this letter as part of the review of the Preliminary Draft Supplemental Environmental Impact Statement (PDSEIS) that was released to the Cooperating Agencies by the U.S. Army Corps of Engineers (USACE) on November 10, 2015. We have submitted our technical comments in the attached matrix but address process concerns below.

Process Concerns:

Document Completeness - The preliminary draft that was provided to NVT is admittedly missing significant sections and is therefore incomplete. Specifically, the PDSEIS does not include the Human Health analysis, the Environmental Justice analysis, and significant information pertaining to the Cultural Resources sections that were previously submitted to USACE by NVT. (See also, Ridolfi comments on document completeness). Impacts on Cultural Resources, Environmental Justice, and Human Health should be analyzed in a coordinated manner, not as mutually isolated entities.

The NVT believes that it is critical for such information to be included in the PDSEIS in order to fully assess potential direct and indirect impacts of the project, as all three directly relate to other important sections throughout the draft document. The approach adopted in the PDSEIS is inconsistent with the Council on Environmental Quality (CEQ) *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*, at 40 C.F.R. 1502.6, that EISs be prepared "using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts". Failure to address these impact categories in an appropriately interdisciplinary, consultative and coordinated manner seriously jeopardizes the integrity of the PDSEIS and compromises its utility as a document on which the

USACE can make decisions. The lack of information also reduces NVT's capability as a Cooperating Agency to ensure that the NEPA document will be sufficient for meaningful comment not only by NVT, but by the public and other agencies as well.

The failure to provide information on impacts to Cultural Resources (including impacts on "*The Ch'u'itnu Traditional Cultural Landscape: A District Eligible for the National Register of Historic Places*"), further violates 40 C.F.R. Parts 1500-1508, encouraging integration of the NEPA review with other planning and environmental reviews, such as Section 106 of the National Historic Preservation Act (NHPA).

Since it is the Native people of Tyonek who will bear the brunt of the project's impacts – which are by definition disproportionate since they will not fall equally on other citizens – the Environmental Justice analysis must be included in the SEIS after direct consultation with the people of Tyonek. It should further be informed by the Akwe Kon Guidelines issued under the Convention on Biological Diversity (<https://www.cbd.int/traditional/guidelines.shtml>), as well as by EPA EJ policy and guidelines (c.f. <http://www.epa.gov.oecaerth/environmentaljustice/indigenous/index.tml>).

In addition, given NVT's heavy reliance on salmon as a keystone species, and the fact that the mining activity will take place in waters that support salmon and other aquatic life, NVT believes the PDSEIS to be woefully lacking in quantification of resources, analysis of direct, indirect, and cumulative loss of resources, substantive support for conclusions drawn, and presentation of adequate mitigation. These areas of analysis are essential in order to address impacts and should be included in the SEIS for CA review.

We recommend that the PDSEIS be revised to address and incorporate analysis of impacts on Cultural Resources, Environmental Justice, and Human Health, and a revised draft SEIS be produced and distributed to the CAs for follow up review and comments. This revised draft should be provided to the CAs before the SEIS is released for public review.

Compliance with 404(b)(1) Guidelines - While the PDSEIS mentions that a 404 permit is needed to 'authorize fill of wetlands for stockpiling overburden, inter burden, etc.', it does not mention the excavation/dredging of waters of the United States for the ***mining activity itself***. This component of the proposed activity is in fact considered a discharge of dredged/fill material under section 404 of the Clean Water Act (CWA) (33 C.F.R. Part 323.2). As such, it is also subject to the 404(b)(1) Guidelines as set out in 40 C.F.R. section 230.

The 404(b)(1) Guidelines state that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. The Least Environmentally Damaging Practicable Alternative (LEDPA) is a determination required of the USACE for a finding of compliance with the Section 404(b)(1) Guidelines. These Guidelines are the substantive regulations that must be met before an activity can be authorized. Yet, nowhere in the PDSEIS is there an explicit discussion of the

404(b)(1) Guidelines and how PacRim and the USACE are complying with it. Pursuant to 33 C.F.R. Appendix B, the alternatives analysis should be thorough enough to use for both the public interest review and the 404(b)(1) guidelines in order to reach a fully informed decision on the LEDPA.

We recommend that the PDSEIS be revised to address and incorporate by appendix the 404(b)(1) Guidelines so that it drives the analysis of alternatives and the LEDPA analysis.

Organizational Approach of the PDSEIS – The PDSEIS’ scope and content as written is encyclopedic rather than analytic. The approach is atomizing rather than comprehensive. Rather than considering the potentially affected environment as a whole, the PDSEIS is broken up into many more or less mutually exclusive parts, with little or no treatment of interactions among these arbitrarily defined parts. This approach obscures and obfuscates the potential impacts of the project, and burdens the reader with such a plethora of uncoordinated data that it makes it very difficult to understand the character of the environment or the nature of potential impacts. This approach is inconsistent with the regulatory direction at 40 CFR 1500.2(a) and 1500.4(b) that EISs be “analytic rather than encyclopedic.” It is also inconsistent with 40 C.F.R. 1502.6, that EISs be prepared “using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts”. This approach is at best multi-disciplinary, not interdisciplinary, and shows no evidence of any effort to integrate the perspectives of the various specialists, to say nothing of the affected community of the NVT.

We recommend that the PDSEIS be reorganized to consider the potentially affected environment as a whole.

Applicant’s Purpose and Need Statement – The purpose for the project is defined narrowly by a minimal look at coal resource availability and elimination of alternatives; *i.e.*, “As a result of this evaluation, the USACE determined that the overall project purpose for the alternatives evaluation in the SEIS is to develop and operate and export coal mine ***within PRCS coal lease holdings in the Beluga Coal Field***” (emphasis added).

The PDSEIS states that because the currently proposed project is similar to the original proposal and is located “in the same project area”, as the one in the original EIS, a supplemental EIS is appropriate. We disagree with this statement and approach, as it has profound implications on the purpose and need statement which serves to drive the alternatives analysis of the LEDPA. The footprint is different from that previously proposed in the prior EIS (especially the related infrastructure/export facilities). Moreover, the alternatives analysis in the original EIS was flawed in that the mine site was referred to as ‘fixed’ and therefore alternative mine sites were not analyzed. There was also minimal, if any, analysis of cultural resources and impacts to NVT in the original document.

The alternatives section and the evaluation of these alternatives in the affected resources sections of the PDSEIS needs to ensure that enough information is available for USACE to make a LEDPA determination. In regards to the project location, for example, where is the analysis on

whether there are other less environmentally damaging practicable coal mining options either within PacRim's lease area or in other areas not currently under lease that would meet their purpose and need?

We recommend that the PDSEIS be revised so that the applicant's purpose and need statement not be "fixed" or limited to PRCS coal lease holdings in the Beluga Coal Field as this limits the analysis to only the applicant's proposed action when other alternatives may be viable.

Cooperating Agency status – The PDSEIS states that "NVT is participating in the NEPA process as a cooperating agency due to their close proximity to the proposed project and the potential for impacts to their cultural and subsistence resources." (pg.1-13). NVT has requested CA status also due to its expertise on the natural and cultural resources that lie within and around the proposed project. It is not merely due to NVT's proximity and potential for impacts to these resources. Even though NVT has been given CA status, its input has been largely disregarded by the USACE. Much of NVT's expertise in the area of cultural resources under Section 106 has been ignored and is not included in the PDSEIS for purposes of evaluating impacts. This approach is inconsistent with the regulatory direction at 40 CFR 1501.6(a)(2), which directs that the lead agency shall: "Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, ***to the maximum extent possible*** consistent with its responsibility as lead agency" (emphasis added).

We recommend that the PDSEIS be revised to include and incorporate NVT's submissions and reports on its cultural resources and potential impacts thereon.

Scoping - The USACE determined that the scoping conducted in 2006 was adequate and that no additional scoping is necessary. (pg. 1-19). We disagree with this conclusion. It has been almost 10 years since that scoping occurred. A number of significant issues surrounding the potential impacts of the proposed project have been brought to light in the years since 2006 — one most significant being cultural resources, another being global climate change and its impact on Alaska. The fact that Cultural Resources is not even mentioned in the list of 'primary concerns' on this page demonstrates this fact. There has been significant increase in public involvement, concern and knowledge of the issues surrounding this project since 2006.

We recommend that the PDSEIS be revised to include a new scoping process, to bring many of these issues up to date prior to releasing a new Draft NEPA document.

Alternatives Analysis – As mentioned above, under 33 C.F.R. Appendix B, the alternatives analysis should be thorough enough to use for both the public interest review and the 404(b)(1) guidelines. The alternatives analysis is insufficient with regard to 404(b)(1).

In addition, many of the statements and conclusions in the Alternatives Analysis section are not well-supported with baseline data or relevant quantitative information. Many of the statements appear to be opinions or assumptions that understate or don't adequately address the potential impacts. In some cases, the statements and conclusions appear to be premature, since they rely

on studies and documents that are in the process of being conducted and further developed. This is inconsistent with the regulatory direction at 40 CFR 1502.1 which directs that “Statements shall be concise, clear, and to the point, ***and shall be supported by evidence*** that the agency has made the necessary environmental analyses”(emphasis added). Accordingly, the PDSEIS does not present a sufficient level of detailed analysis relative to the impacts and as required to meet NEPA requirements or to support factual determinations (40 CFR 230.11) and permit issuance under the CWA.

We recommend that the PDSEIS be revised so that the alternatives focus on wetland impacts using baseline data or relevant quantitative information to support conclusions. In addition, alternatives should be revised to include mining excavation of smaller areas with concurrent success-based reclamation.

If you have any questions regarding these comments, please feel free to contact me at kendall@narf.org or via telephone at (907) 257-0505.

Yours sincerely,



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